

P. O. Box 272400
Fort Collins, Colorado 80527-2400

ATTORNEY DOCKET NO. 10004958-1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Richard L. Gardner et al.

Confirmation No.: 5764

Application No.: 09/886,444

Examiner: K. Brown

Filing Date: June 21, 2001

Group Art Unit: 2877

Title: AUTOMATED IMAGING WITH PHOSPHORESCENT IMAGING TARGETS

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Mali Stop Petition
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

SEP 06 2005

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)

Sir:

1. Applicant petitions for the revival of the above-identified application.
2. Nature of Abandonment:
 - (X) In an office communication from the PTO dated 08-30-2004, the undersigned has noted that the above-identified application is being forwarded to the Abandoned Files because applicant's response to the Official Action mailed 11-24-2003 has not been received within the statutory period or any extension requested therefor.
 - () The undersigned has reviewed his records and noted that the response to the Official Action mailed _____ was not timely filed within the statutory period or any extension requested therefor.
3. Response filed:
 - The proposed response to the Official Action dated 08-30-2004
 - () has been filed on _____
 - () is enclosed herewith.
4. (X) Enclosed herewith is an adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137 (a) was unavoidable.
5. Terminal disclaimer 37 CFR 1.137 (c):
 - (X) Since this utility application was filed on or after June 8, 1995, no terminal disclaimer is required.
 - () A terminal disclaimer and disclaimer fee of \$110.00 disclaiming a period of equivalent to the period for abandonment is enclosed herewith.

Charge \$ 110.00 to Deposit Account 08-2025. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.26. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

- () I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Alexandria, VA 22313-1450. Date of Deposit: _____
- OR
- () I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number _____ on _____

Number of pages:
Typed Name: Phyllis Ewing

Respectfully submitted,
Richard L. Gardner et al.

By Michael J. Fogarty, III

Michael J. Fogarty, III

Attorney/Agent for Applicant(s)

Reg. No.: 42,541

Date: 08-10-2004

Telephone: (555) 555-5555

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, Colorado 80527-2400

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SEP 06 2005

Docket No.: 10004958-1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard L. Gardner et al.

Application No.: 09/886,444

Confirmation No.: 5764

Filed: June 21, 2001

Art Unit: 2877

For: AUTOMATED IMAGING WITH
PHOSPHORESCENT IMAGING TARGETS

Examiner: K. Brown

**PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR § 1.137(A)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained. Applicants hereby petition the Commissioner for revival of the above-identified application for patent.

The last communication received from the U.S. Patent and Trademark Office in this application was an Office Action mailed on May 9, 2003. A response to that Office Action was mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on August 11, 2003. The August 11, 2003 response was accompanied by a proper certificate of mailing.

The Declaration of Catherine B. Grow, the Legal Administrator in charge of maintaining the corporate mail log for formal papers received by Hewlett-Packard, the

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Application No.: 09/886,444

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Assignee, from the Patent and Trademark Office (PTO), is being filed concurrently herewith in support of Applicants' Petition. Along with the declaration is a copy of the mail log reflecting documents received from the PTO in the Mailed Date period between November 17, 2003, and December 17, 2003, attached hereto on a CD-ROM labeled Appendix A. Appendix A shows that no papers were received by Applicants related to the present application during the month period around when the PTO alleges the Final Office Action was mailed.

As evidenced by the declaration and copies of the assignee's applicable docketing records, attached hereto as Appendix A, Applicants did not receive the Final Office Action that the PTO notes was mailed on November 24, 2003. Therefore, Applicants' failure to timely respond to said Final Office Action was unavoidable. The attached declaration supports that procedures were in place for docketing each paper received from the PTO and that Ms. Grow received adequate training and, indeed, had adequate experience to maintain such docketing system. However, despite the procedures for maintaining the docketing system, the Final Office Action was never received by Applicants or the Assignee.

The first communication received from the PTO after the Office Action mailed on May 9, 2003 was the Notice of Abandonment, received on July 6, 2004. After docketing this paper, the Notice of Abandonment was sent to the undersigned counsel for preparation of this Petition. Without delay, a search of the docketing records was performed to determine whether or not the assignee received the November 17, 2003, Final Office Action. When it was determined that no such Final Office Action was received, the undersigned representative directed the preparation of the attached Declaration and Appendix A. This Petition is, thereafter, filed within a month from receiving the Notice of Abandonment and without undue delay.

On or about July 10, 2004, Applicants contacted the Examiner, Khaled Brown, attempting to obtain a copy of the Final Office Action mailed on November 17, 2003. However, after discussing Applicants' request with Clayton LaBalle, Examiner Brown did not send a copy of the Final Office Action. Therefore, Applicants have made a good faith attempt to make a response to the outstanding office action, but has been unable to respond based on the Examiner's decision not to send a copy of the Final Office Action.

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Applicants, therefore, asserts that each requirement of 37 C.F.R. § 1.37(a) has been met. The reasons for the unavoidable delay, as fully set forth in the declaration, supported by Appendix A, and in this Petition, provide adequate basis for the revival of the present application pursuant to 37 C.F.R. § 1.37(a). Applicants, therefore, request that the present application be revived.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 08-2025, under Order No. 10004958-1.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV482737688US, in an envelope addressed to: MS Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Date of Deposit: August 10, 2004

Typed Name: Phyllis Ewing

Signature: 

Respectfully submitted,

By 

Michael J. Fogarty, III
Attorney/Agent for Applicants
Reg. No.: 42,541

Date: August 10, 2004

Telephone No. (214) 855-8172

(X) I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airmail No. EV482737688US, in an envelope addressed to: MS Petition, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450
Date of Deposit: August 10, 2004

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Signature:

Phyllis Ewing
PHYLLIS EWING

PATENT APPLICATION DOCKET NUMBER: 10004958-1

SERIAL NUMBER: 09/886444

GROUP ART UNIT: 2877

FILED: June 21, 2001

EXAMINER: Khaled Brown

SUBJECT: Automated Imaging With Phosphorescent Imaging Targets

MAIL STOP PETITION
COMMISSIONER FOR PATENTS
P. O. BOX 1450
ALEXANDRIA, VA 22313-1450

SIR OR MADAM:

DECLARATION OF CATHERINE E. GROW IN SUPPORT OF A PETITION TO
WITHDRAW THE HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE
THE OFFICE ACTION

I, Catherine E. Grow, who reside at Fort Collins, Colorado, hereby declare as follows:

1. I am currently a Legal Administrator for the Hewlett-Packard Corporate Legal Department. I have held this position since July 16, 2002.
2. My responsibilities include maintaining a corporate mail log of formal papers received from the Patent and Trademark Office addressed to the Hewlett-Packard Company, Intellectual Property Administration.
3. I was trained by the previous Legal Administrator in charge of maintaining the corporate mail log of formal papers received from the Patent and Trademark Office. I worked with the previous Legal Administrator for four weeks prior to taking over this responsibility for myself.
4. My procedure for handling formal papers received from the Patent and Trademark Office is as follows:

- (a) Mail received from the Patent and Trademark Office is opened and date stamped to reflect the date received.
 - (b) An electronic copy of the formal papers is sent to the responsible Hewlett-Packard attorney for any correspondence with a required due date of less than 7 days from the date received by Hewlett-Packard Company, Intellectual Property Administration.
 - (c) The formal papers are entered into the electronic mail log to identify each of the formal papers by the type of action, date of mailing from the Patent and Trademark Office, date of receipt by the Hewlett-Packard Company, Intellectual Property Administration, serial number of the patent application, internal docket number, initials of the responsible Hewlett-Packard attorney, and the HP Office where the file is managed.
 - (d) A Mail Log Report is generated and forwarded to the proper office for docketing in the Hewlett-Packard Patent Database. The original formal papers are scanned and uploaded into the Hewlett-Packard image database. The originals are filed and archived for a two-year period in accordance to Hewlett-Packard's Archival policies.
5. A copy of the Hewlett-Packard Legal Department mail log reflecting Mailed Date Period between 11/17/03 and 12/17/03 is attached, labeled Appendix A.
 6. If an Office Action were received from the Patent and Trademark Office for patent application serial number 09/886444, Hewlett-Packard attorney's docket number 10004958-1, this Office Action would have been logged in the mail log reflecting the mailed date of 11/24/03. This Office Action does not appear in the attached mail log shown in Appendix A.
 7. It is my belief that the Office Action mailed on 11-24-03 for patent application serial number 09/886444, Hewlett-Packard attorney's docket number 10004958-1, was not received by Hewlett-Packard Company, Intellectual Property Administration.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

By Catherine E. Grow

Catherine E. Grow

Legal Administrator

Hewlett-Packard Legal Department, Intellectual Property Administration

Date August 3, 2004